

### **REMARKS/ARGUMENTS**

The Office Action of November 17, 2008 has been carefully reviewed and these remarks are responsive thereto. Claims 1, 3, 4, 8, 10-13, 15, and 21-25 have been amended, claims 17 and 18 have been canceled without prejudice or disclaimer, and new claims 26-29 have been added. Claims 1-16 and 19-29 thus remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Rejections Under 35 U.S.C. § 103***

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,410,326, hereinafter Goldstein, in view of U.S. Pat. No. 5,192,999, hereinafter Graczyk. Claims 8-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,477,262, hereinafter Banker, in view of U.S. Pat. No. 5,539,871, hereinafter Gibson, and in further view of Graczyk. Claims 22 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banker in view of Graczyk. Claims 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banker, in view of Graczyk, and in further view Gibson. Applicant respectfully traverses these rejections.

Applicant has amended independent claims 1, 8, 22, and 23 to recite “audiovisual television programs” and “audio programs” received in the same “composite data stream” and “wherein a presentation of the audio programs by the upgrade circuitry is independent from and uncorrelated to the presentation of the audiovisual television programs.” Support for these amendments may be found in Applicant’s specification at least on page 5, lines 19-30, and on page 36, lines 7-12. Applicant respectfully submits that Graczyk, Goldstein, Gibson, and Banker, individually or in combination, do not disclose such features. The Office Action has cited Graczyk for similar features, but concedes that separate audio and video in Graczyk are not received from the same source (Office Action, page 2). The Office Action further appears to concede that such features are not disclosed in Goldstein and Banker, noting that neither discloses a means to separately access audio while displaying a television program (Office Action, page 8, 11, 14). Gibson also does not disclose such features as it has no mention of separate audio and audiovisual television programs. Accordingly, independent claims 1, 8, 22, and 23 are allowable.

Claims 1-7, 9-16, 19-21, and 24-25 depend from one of claims 1, 8, or 23 and are allowable for all the reasons given above concerning their respective base claims, and further in view of their specific recitations.

***New Claims***

Claims 26-29 have been added to depend on independent claims 1, 8, 22, and 23, respectively and to recite “video, graphics and text” features previously recited in claims 1, 8, 22, and 23. Accordingly claims 26-29 are allowable for at least the same reasons as claims 1, 8, 22, and 23.

**CONCLUSION**

All issues having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact the undersigned at (202) 824-3160.

Respectfully submitted,

**BANNER & WITCOFF, LTD.**

Dated this 17<sup>th</sup> day of April, 2009

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